

## CHAPTER 31 - APPELLATE PROCEDURE

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## **CHAPTER 31 - APPELLATE PROCEDURE**

### **31.1      SECTION 1:          DEFINITIONS**

- 31.1.1**      "Appellate Judge" shall refer to any Judge included in a list of appellate judges, duly approved by the Red Cliff Tribal Council.
- 31.1.2**      "Appellant" means the party who files the notice of appeal.
- 31.1.3**      "Appeal" means written notice by a party that they are exercising their right to have the decision of the trial court reviewed by an appellate panel.
- 31.1.4**      "Appellant Court" is synonymous with "appellant panel" and refers to the panel selected by the Clerk of Tribal Court from the list of appellate judges, duly approved by the Tribal Council.
- 31.1.5**      "Respondent" means the party against whom the appeal is filed (i.e., the appellee).
- 31.1.6**      "Tribal Court" means the Red Cliff Tribal Court.
- 31.1.7**      "Clerk" means the Clerk of the Red Cliff Tribal Court.

### **31.2      SECTION 2:          COMPOSITION OF THE APPELLATE COURT**

- 31.2.1**      The Appellate Court shall consist of three (3) appellate judges selected by lot, by the Clerk, from amongst the list of Appellate judges which has been duly approved by the Red Cliff Tribal Council.
- 31.2.2**      The Clerk shall assure panel selection is equitable. Judges not selected for the immediately preceding panel shall have two (2) ballots for lot selection; Judges previously selected shall have one (1) ballot for lot selection.
- 31.2.3**      The Chief Judge of the Tribal Court shall appoint the Chief Judge of the Appellate Panel from amongst the Appellate Panel Judges.

31.2.4 The Clerk shall notice parties of the selected panel members. The parties shall have forty-eight (48) hours after receipt of notice to file a written objection to the panel.

31.3 **SECTION 3: JURISDICTION AND SCOPE OF REVIEW**

31.3.1 The Appellate Court shall have jurisdiction to review all final orders, judgments and decrees of the Red Cliff Tribal Court.

31.4 **SECTION 4: RIGHT OF APPEAL**

31.4.1 Any party who is aggrieved by a final order, decree or judgment of the Trial Court may appeal in the manner prescribed by this chapter.

31.5 **SECTION 5: TIME FOR FILING & SERVICE OF NOTICE OF APPEAL**

31.5.1 Written Notice of Appeal from a decision of the trial court must be filed within ten (10) working days of the announcement of the decision in open court. If a decision is not announced in open court, written Notice of Appeal must be filed within ten (10) working days from the receipt of the written decision. Trial Court decisions not announced in open court shall be served upon all parties by the Clerk, via Certified Mail.

31.5.2 The Notice of Appeal shall specify the party(ies) making the appeal and shall designate the final order, judgment or decree, or part thereof, from which the appeal is taken.

31.5.3 Copies of the Notice of Appeal shall be forwarded to all parties to the action. The Appellant(s) shall be required to provide proof of service of the Notice of Appeal upon the adverse party or parties.

31.6 **SECTION 6: TIME FOR FILING GROUNDS; BRIEFS AND MEMORANDA**

- 31.6.1** An Appellant shall submit a written statement of the grounds for his or her appeal within ten (10) days of filing the Notice of Appeal, unless the Court below or the Appellate Court shall deem an expedited appeal to be advisable and shall notify the appellant promptly of the reduced time limit.
- 31.6.2** Within, thirty (30) calendar days of filing the Notice of Appeal, appellant may file a written brief memorandum or statement in support of their position.
- 31.6.3** Respondent shall have thirty (30) calendar days after receipt of Appellant's brief, memorandum or statement of support, to file a responsive brief, memorandum, or statement in support of their position.
- 31.6.4** All statements, briefs and memoranda filed with the Court under this Chapter shall be served upon all parties to the action.

**31.7        SECTION 7:        COMPUTATION OF TIME**

- 31.7.1** In computing any period of time prescribed or allowed by this Chapter, the day of the act, event or default from which the designated period begins to run shall not be included, unless otherwise specified elsewhere in this code. The last day of the period so computed shall be included. Fridays, Saturdays, Sundays, legal and/or tribal holidays shall always be excluded when computing time under this Chapter.

**31.8        SECTION 8:        FILING FEES AND COSTS**

- 31.8.1** The filing fee for any appeal shall be a total of \$100. \$15 of the filing fee shall be paid at the time of filing the Notice of Appeal and is non-refundable. The remaining filing fee of \$85 shall be paid at the time of filing the Grounds for Appeal.
- 31.8.2** The Tribal Court may order the filing fee waived, upon petition, be Appellant, where it is satisfied that the appellant lacks the means to pay it.

Any Petition for Waiver of Filing Fee must include a statement of inability to pay and must accompany Appellant's Notice of Appeal.

**31.8.3** When the Tribe is the Appellant, the filing fee may be waived upon petition. If the Tribal Court grants a waiver of the filing fee, unusual costs or expenses associated with the appeal may be assessed to the Tribe. If the Appellant is a Tribal Enterprise or Board with delegated powers, the filing fee cannot be waived unless the Petition for Waiver is tested by the standard of inability to pay.

**31.8.4** If an appeal is withdrawn, the withdrawal must be filed prior to the time for filing of the Grounds for Appeal. If the withdrawal is not filed prior to the time for filing of the Grounds for Appeal, the filing fee shall not be refunded.

**31.8.5** Notice of Appeal shall be accompanied by a cash deposit or bond in an amount equal to the amount of the judgment, plus costs. The deposit/bond requirement may be waived only when in the judgment of the Court such deposit/bond is not in the interest of justice and/or such waiver does not unnecessarily harm the judgment holder.

**31.9        SECTION 9:        STAY ON APPEAL**

**31.9.1** The Trial Court or Appellate Court may, in its discretion, stay or modify injunctive orders or, stay any judgment, pending appeal.

**31.10      SECTION 10:      RECORD ON APPEAL**

**31.10.1** The papers filed in Tribal Court, the exhibits and the transcript of the proceedings shall constitute the record on appeal in all cases.

**31.11      SECTION 11:      ORAL ARGUMENT**

**31.11.1** At the discretion of the appellate panel, to aid it in reaching a wise decision or to avoid injustice to the appellant, an oral hearing on the appeal of matters of law may be ordered.

**31.11.2** The Appellate Court shall determine how arguments shall be presented to the Court, the length of time allowed to each side, the order in which arguments are presented, the procedure of questioning by the Judges and other such matters.

**31.12      SECTION 12:            OPINION OF THE COURT**

**31.12.1** All appellate decisions shall be accompanied by a written opinion, briefly stating the issues as they appeared to the Court and the basis for the decision.

**31.12.2** A written opinion shall be issued by the Court no later than thirty (30) days after the conclusion of the oral argument, or, if no oral argument is held within thirty (30) days of the expiration of time to file a responsive brief, statement or memoranda.

**31.12.3** The Appellate Panel, with good cause as determined by the Court, may extend the time for issuing a written opinion, provided that the parties are notified of such extension. Any Notice of Extension must include the cause for and the length of such extension.

**31.12.4** If no written opinion is issued by the Court within the time designated in Section 31.12.2, or by extension under 31.12.3, the Clerk shall contact members of the Appellate Panel to determine the status of the opinion, upon request, by either party. The Clerk of Court shall, within ten (10) days of receiving such request, report the status of the opinion in writing to the Trial Court and the parties. It is appears from the Clerk's report that no written opinion is forthcoming, either party may apply to the Trial Court for equitable relief. The provisions of Section 31.12.1 shall apply to this section.

**31.12.5** The decisions of the Red Cliff Appellate Court are final and conclusive, and no further appeal may be taken.

**31.13      SECTION 13:      CONFLICT OF INTEREST**

**31.13.1**      A Judge who has presided over the case at issue or whom has any interest in the outcome of the proceedings, other than the interests of justice may not sit as an Appellate Judge. All conflicts or potential conflicts of interest shall be disclosed to all parties to the proceeding at the earliest possible date, and for the record.

**31.14      SECTION 14:      FRIVOLOUS APPEALS**

**31.14.1**      If an appeal is found by the Appellate Court to be frivolous, the Court may dismiss the appeal and award costs to the respondent. The Court may also assess expenses incurred by the Court to the Appellant. If an Appellant has been granted a waiver of fees, the Court may assess a duty of community service to the Appellant.

**31.15      SECTION 15:      LEGAL      FEES      AND      EXPENSES      OF  
LITIGATION**

**31.15.1**      At the Court's discretion, and upon petition, the Court may award legal costs of litigation to the prevailing party. The burden of establishing the necessity for such an award shall be upon the prevailing party.